IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:09-CV-205-D

LORD CORPORATION, Plaintiff, v. S&B TECHNICAL PRODUCTS, INC., TERRAMIX S.A., and MARK A. WEIH, Defendants.	)	**ORDER**

On May 3, 2011, Lord Corporation ("Lord" or "plaintiff") filed a motion in limine to exclude the opinions and testimony of Steven J. Hazel ("Hazel") [D.E. 500]. On June 7, 2011, Terramix S.A. ("Terramix" or "defendant") responded in opposition [D.E. 544]. On June 21, 2011, Lord replied [D.E. 559]. On June 29, 2011, the court referred the motion to Magistrate Judge Gates for a memorandum and recommendation. On February 24, 2012, Judge Gates issued a memorandum and recommendation ("M&R") [D.E. 622]. Judge Gates recommended that the court grant in part and deny in part without prejudice Lord's motion. Id. 1, 27. On March 2, 2012, Terramix objected to the M&R. Def.'s Obj. [D.E. 636]. Lord also objected to the M&R. Pl.'s Obj. [D.E. 640]. On March 9, 2012, Lord responded to Terramix's objection, Pl.'s Resp. [D.E. 651], and Terramix responded to Lord's objection. Def.'s Resp. [D.E. 654].

"The Federal Magistrates Act requires a district court to make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made." Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005) (alteration in original) (emphasis and quotation omitted); see 28 U.S.C. § 636(b). Absent a timely objection, "a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond, 416 F.3d at 315 (quotation omitted).

The court has reviewed the M&R, the record, and the objections. As for those portions of the M&R to which no party objected, the court is satisfied that there is no clear error on the face of the record.

The court has reviewed de novo the portions of the M&R to which the parties objected. Terramix objects to Judge Gates's recommendation that the court exclude Hazel's "opinions and related testimony . . . regarding the diminution in value of Terramix-affiliated customers/distributors, S&B Technical Products ("S&B") and Hultec Asia Pacific, Pty., Ltd. ("HAP") as a measure of their future loss of profits from reputational damages arising from their resales of defective Terramix gaskets." Def.'s Obj. 1, 6–16; see M&R 22–27. Judge Gates found that Hazel has not provided an evidentiary basis for the quantitative assumptions that informed his opinion. M&R 25–27. In its objection, Terramix argues that Hazel used a proper technique in forming his opinion as to these damages, that his chosen technique necessarily involved making a subjective determination, and that Hazel reviewed relevant evidence before making the necessary subjective determination. Def.'s Obj. 6–16. Judge Gates considered and rejected these arguments, finding that Hazel's arbitrary assumption "presents a particularly great risk of misleading the jury because its calculation is couched in complex sounding financial jargon." M&R 26. The court finds no error in Judge Gates's conclusions. Accordingly, the objection is overruled. The court also finds no error in the portions of the M&R to which Lord objects, and therefore overrules Lord's objections.

In sum, the court OVERRULES the objections [D.E. 636, 640] and adopts the M&R's conclusions [D.E. 622]. Plaintiff's motion in limine to exclude the opinion and testimony of Steven J. Hazel [D.E. 500] is GRANTED IN PART as to evidence pertaining to the above-described diminution in value, and DENIED IN PART as to Steven J. Hazel's other opinions and proposed testimony. The court reserves ruling under Federal Rule of Evidence 403 as to the non-excluded portion of Hazel's opinions and proposed testimony.

SO ORDERED. This 22 day of March 2012.

JAMES C. DEVER III
Chief United States District Judge